IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 741

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner,*

v.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, and L. L. WOOTEN, E. C. BRYAN, B. B. PHILLIPS, JR., T. C. MATHIS, P. C. SARRETT and H. W. HAWKINS, in behalf of themselves and certain other persons similarly situated, members of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and members of the craft or class of clerical, office, station and storehouse employees of Atlantic Coast Line Railroad, *Respondents.*

PETITIONER'S MEMORANDUM REPLY TO BRIEF FOR RESPONDENTS

The brief for respondents is a clever effort to represent that the issues raised by the petition are wholly issues of fact. On the contrary—*there are no issues of fact* raised by the petitioner. There is no disagreement between petitioner and respondents as to the facts regarding negotiations between the representatives of the railroad and of

the employees. The Circuit Court was not called upon to decide any issue of fact.

The Circuit Court decided *as a matter of law* that the conduct of the negotiations by the railroad representatives (as to the facts of which there was no dispute) did not constitute "collective bargaining in good faith." Accordingly, the Circuit Court decided that the District Court—*upon the undisputed facts*—should have granted a mandatory injunction requiring the railroad (the present petitioner) to conduct further negotiations in a manner which the Court would approve.

The petitioner contends that the law laid down in the opinion of the Circuit Court to support a mandatory injunction is not only in conflict with the law as expounded in other circuits and in the Supreme Court, but is in conflict with what the Circuit Court itself concedes to be the law, which is that "it is not the function of the courts to make agreements for the parties or to force them to accept agreements which they are unwilling to accept."

Nevertheless, *on the undisputed facts as found by the District Court,* which were not controverted by the Circuit Court, the only possible purpose of issuing a mandatory injunction in this case must be to bring pressure upon the railroad to make (in whole or in part) an agreement which it is unwilling to make. Representatives of the railroad have heretofore, *on the undisputed facts,* received the proposed agreement and discussed it at length in several conferences with representatives of the employees, whom the railroad recognized and "treated with" as authorized representatives of the employees. After these discussions and due consideration, the representatives of the railroad declined to agree to the proposed changes in the current agreement. What more should the representatives of the railroad do? What more can they be compelled by mandatory injunction to do, in order to "bargain in good faith?"

We seek a review by the Supreme Court of two pure issues of law: First, on the undisputed facts, was the Dis-

trict Court right in holding, as a matter of law, that the railroad representatives *had* "bargained in good faith," or was the Circuit Court right in holding, *on the same facts,* that the carrier's conduct did *not* constitute "bargaining in good faith?" Second, was the District Court right, as a matter of law, in refusing, or was the Circuit Court right, as a matter of law, in *ordering,* a mandatory injunction to compel the railroad representatives to conduct further negotiations under the compulsion and supervision of the District Court?

As pointed out in our petition, previous judicial interpretations of the requirements of the Railway Labor Act have established *as a rule of law* that a mandatory injunction can be and should be issued to compel a railroad to "treat with" the duly authorized representatives of its employees—that is to recognize the authenticity of their representation and to discuss freely their proposals. There is *no* decision of this Court interpreting the Railway Labor Act to authorize the issuance of a mandatory injunction to provide for a supervision and direction of such negotiations by the District Court.

We submit that the petition presents "an important question of federal law which has not been, but should be settled by this court" and also that the Circuit Court "has decided a federal question in a way probably in conflict with applicable decisions of this court."

This court granted certiorari for the settlement of questions of similar importance in *Telegraphers* v. *Railway Express Agency,* 321 U. S. 342, 346, stating:

> "These questions are unsettled ones important to the administration of the current Railway Labor Act, and we granted certiorari."

For these reasons we submit that the petition should be granted.

Respectfully submitted,

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